

ANALYSIS

COMPARATIVE ANALYSIS OF INDIA'S DIGITAL PERSONAL DATA PROTECTION BILL, 2022 AND 2023



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Disclaimer

The points outlined in this paper are not necessarily the position and the views of The Dialogue, as the paper only compares the 2022 and the 2023 Bills along with an explanation of the differences. We will publish an analysis of the Digital Personal Data Protection Bill, 2023, separately, in due course of time.

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Introduction

Intrinsic to India's long-drawn transition towards chartering a privacy-safe environment, the Ministry of Electronics and Information Technology (MeitY), Government of India, tabled the Digital Personal Data Protection Bill, 2023 (DPDPB 2023) during the monsoon session of the Parliament, on 3rd August 2023. It sets obligations for Data Fiduciaries and Significant Data Fiduciaries, provides safeguards for children's data, vests rights in individuals, allows cross-border data transfers, outlines exemptions from the bill as well as provides contour of the Data Protection Board (DPB), financial penalties, and grievance management system etc.

This bill indicates an important step towards establishing privacy in India and enacting a data protection law. Towards that objective, through this paper, we have compared the provisions of the Digital Personal Data Protection Bill, 2022 (DPDPB 2022) with the 2023 version and explained the differences and significant changes that have taken place. The sections of this paper are divided as per the chapters of the DPDPB 2023. Tabulation under every chapter provides (a) the synopsis, i.e., the premise of the clause within the respective section, (b) a mapping of the significant changes in sections within chapters, and (c) an explanation of the changes.

Preliminary

This chapter of the DPDPB 2023 sets the context for the bill by providing definitions, interpretations, and information on the applicability of this Bill. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill, 2022	Digital Personal Data Protection Bill, 2023	Explanation
Short Title and Commencement			
Implementation Timeline	Under Clause 1(2), different dates may be notified for different provisions of this Act.	No Changes	There is no clear indication of the timeline for implementing various compliance obligations within the bill. ¹
Definitions			
Definition of “Appellate Tribunal”	There were no provisions/ definitions of the Appellate Tribunal.	Under Clause 2(a), the DPDPB 2023 defines the “Appellate Tribunal” as Telecom Disputes Settlement (TDSAT) and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997.	For the first time, the data protection bill includes an Appellate Tribunal, which usually hears appeals on matters relating to telecom disputes.

¹ Tripathy, Venkatesh, & Pande. (2020). Impact Study: Personal Data Protection Bill on the Start-up Ecosystem. *The Dialogue*. https://thediologue.co/wp-content/uploads/2021/01/Startup-Report-Final-Documents/vF.pdf?fbclid=IwAR1XJJURqA5EHB_IdBpCxElotPPlqXbXpzFu8HW7L3R_HwZA1eKDdq2eDo4

<p>Definition of “Certain Legitimate Use Cases”</p>	<p>There were no provisions/ definitions of certain legitimate use cases.</p>	<p>Under Clause 2(d), the DPDPB 2023 refers to certain legitimate use cases in relation to Clause 7, where a Data Fiduciary may process the personal data of a Data Principal without additional consent.</p>	<p>The DPDPB 2023 has changed the terminology of “Deemed Consent”, which was present in DPDPB 2022, to “Certain Legitimate Use Cases.”</p>
<p>Definition of “Chairperson” and “Members” of the Board</p>	<p>There were no provisions/ definitions of board members and chairperson.</p>	<p>Under Clause 2(e), and Clause 2(q), the DPDPB 2023 refers to the “chairperson” as the chairperson of the board, and “Members” refer to board members (including the chairperson).</p>	<p>This definition brings clarity as the Bill refers to these terms within different clauses.</p>
<p>Definition of “Consent Manager”</p>	<p>The definition of “Consent manager” is placed within Clause 7, which talks about consent.</p>	<p>Under Clause 2(g), the definition of Consent Manager in DPDPB 2023 is moved to the section where definitions are listed.</p>	<p>Moving the definition of Consent Manager under the section of definitions makes it easier for reference.</p>
<p>Definition of “Data Principal”</p>	<p>Under Clause 2(6), “Data Principal” means the individual to whom the personal data relates. In the case of a child, the term includes such a child's parents or lawful guardian.</p>	<p>Under Clause 2(j)(ii), the definition of “Data Principal” also includes a lawful guardian acting on behalf of an individual with a disability.</p>	<p>The inclusive definition of Data Principals will help in minimising fall through the cracks in terms of serving disabled individuals.</p>
<p>Definition of “Digital Office”</p>	<p>There was no definition of digital office.</p>	<p>Under Clause 2(m), the DPDPB 2023 defines a digital office as an office that adopts an online mechanism wherein</p>	<p>While the DPDPB 2022 did hint at the digital-by-design for the processes of the Data Protection Board, the DPDPB 2023 has made it clearer by defining it as a</p>

		the proceedings, from receipt of intimation or complaint or reference or directions or appeal, as the case may be, to the disposal thereof, are conducted in online or digital mode.	“digital office” where all the processes and proceedings will be done online.
Definition of “Digital Personal Data”	There was no definition of digital personal data.	Under clause 2(n), the DPDPB 2023 defines digital personal data as data which is in digital form.	This definition is essential as the bill's scope only pertains to digital personal data.
Definition of “Notification”	There was no definition of notification.	Under Clause 2(r), the DPDPB 2023 defines notifications as notifications published in the Official Gazette, and the expressions “notify” and “notified” shall be construed accordingly.	As the bill will be notifying various rules, this definition provides clarity to the process of subordinate regulations to be made under this bill.
Definition of “Harm”	Under Clause 2(10), the bill provides a definition of “Harm” in relation to Data Principal, like bodily harm, identity theft, harassment etc.	The Definition of “Harm” is removed from the Bill.	Moving away from the harm-based approach shows that the causation of harm is not the only factor for Data Principals to raise a complaint with the Data Protection Board. Having said that, some indication and open definition of the harm could have been helpful in terms of measuring impacts. ²

² Id.; Agrafiotis, Nurse, Goldsmith, Creese, & Upton. (2018). A taxonomy of cyber-harms: Defining the impacts of cyber-attacks and understanding how they propagate. *Journal of Cybersecurity*. <https://doi.org/10.1093/cybsec/tyy006>

<p>Definition of “Processing”</p>	<p>Under Clause 2(16), Processing means an automated operation or set of operations performed on digital personal data as mentioned under this clause.</p>	<p>Under Clause 2(x), Processing means a wholly or partly automated operation or set of operations performed on digital personal data, as mentioned under this clause.</p>	<p>This means semi-automated or mechanical data processing is now also included in the bill. For instance, data processed by a hotel using a property management system (PMS) which is semi-automatic, where reservations made through online travel services automatically flow into the system when humans also feed some reservation information of walk-in guests. Therefore, such forms of data processing by Data Fiduciaries would also fall within the bill's ambit.</p>
<p>Definition of “Significant Data Fiduciary”</p>	<p>There was no definition of significant Data Fiduciary.</p>	<p>Under Clause 2(z), significant Data Fiduciaries mean any Data Fiduciary or class of Data Fiduciaries as may be notified by the Central Government under Clause 10.</p>	<p>This definition brings clarity as we refer to this term within different clauses of the bill.</p>
<p>Definition of “Specified Purpose”</p>	<p>There was no definition of specified purpose.</p>	<p>Under Clause 2(za), the DPDPB 2023 provides that “specified purpose” means the purpose mentioned in the notice given by the Data Fiduciary to the Data Principal in accordance with the provisions of this Act and the rules made thereunder.</p>	<p>This definition brings clarity as we refer to this term within different clauses of the bill. Besides, this provision also creates accountability to ensure that Data Fiduciaries adhere to the purpose limitation principle.</p>
<p>Definition of “Public Interest”</p>	<p>Under Clause 2(18), the bill defines public</p>	<p>The Definition of “Public Interest” is</p>	<p>At the operational level, the lack of definition of “public</p>

	<p>interest and towards that, lists things that would qualify the same such as (a) sovereignty and integrity of India; (b) security of the State; (c) friendly relations with foreign States; (d) maintenance of public order; (e) preventing incitement to the commission of any cognizable offence relating to the preceding sub-clauses; and (f) preventing the dissemination of false statements of fact.</p>	<p>removed from the Bill.</p>	<p>interest” might have implications for some emerging business models (refer to the explanation in Chapter 3).</p>
Application of Act			
<p>Offshore Applicability of the Bill</p>	<p>Under Clause 4(2), the bill states that provisions of DPDPB 2022 will apply to the processing of digital personal data outside India, if the processing is in relation to the profiling of and offering goods and services to Data Principals within the Indian territory.</p>	<p>Under Clause 3(b), the bill states that provisions of DPDPB 2023 will apply to the processing of digital personal data outside India, if the processing is in relation to offering goods and services to Data Principals within Indian territory.</p>	<p>Removal of “profiling” from the definition brings out the distinction that the bill tries to make between personal and non-personal data, where mostly profiling involves aggregated and non-personal information, which is outside the ambit of this bill.</p>
<p>Processing of Personal Data in the Public Domain</p>	<p>Under Clause 4(3), the bill lists the conditions where provisions of the DPDPB 2023 will not apply, including non-automated processing of</p>	<p>Under Clause 3(c), the bill only states that the DPDPB 2023 shall not apply to (a) personal data processed by an individual for personal or domestic</p>	<p>This will allow emerging technologies like Generative AI to process publicly available personal data made available by the Data Principals themselves without consent. Processing without consent makes it</p>

	<p>personal data, offline personal data, personal data about an individual that is contained in a record that has been in existence for at least 100 years etc.</p>	<p>purposes, (b) the Data Principal to whom such personal data relates, (c) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.</p>	<p>faster and simpler and smoother for businesses in specific cases.</p>
<p>Activities Outside the Scope of the Bill</p>			<p>While DPDPB 2023 states that both semi and fully-automated operations fall within the bill's ambit, the removal of non-automated processing of personal data creates uncertainty in terms of whether the bill also applies to the manual processing of data.</p> <p>Besides, removing the timestamp over the applicability of the bill could cause concerns at the implementation level. For instance, it may lead to challenges if the Data Fiduciary cannot find the Data Principal whose data has existed in the record for more than 100 years to seek consent for processing the data post the enactment of the bill.</p>

Obligations of Data Fiduciary

This chapter of the DPDPB 2023 lays down the obligations under which the Data Fiduciaries and Significant Data Fiduciaries can process data. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Notice			
Manner of Notice	Under Clause 6(1), the DPDPB 2022 mandates Data Fiduciaries to provide the Data Principal an itemised notice in clear and plain language containing a description of personal data sought to be collected by the Data Fiduciary and the purpose of the processing of such personal data.	Under Clause 5(1), the DPDPB 2023 mandates Data Fiduciaries to provide notice informing Data Principal (a) the purpose for which the personal data is collected, (b) the manner in which rights can be exercised and (c) the manner in which Data Principal can complain to the Data Protection Board	Firstly, the obligation to have a clear and plain language notice is removed from the DPDPB 2023. However, additionally, the Bill mandates Data Fiduciaries to provide information on how to exercise their rights and seek grievances from the Data Protection Board. Clause 5(2)(b) in the DPDPB 2023 is the grandfather clause which indicates that Data Fiduciaries can continue with activities that were commenced before the act unless the Data Principal has withdrawn the consent post providing a notice.
Notice for Actions Commenced Before the Act	Under Clause 6(2), the DPDPB 2022 mandates Data Fiduciaries to give to the Data Principal an itemised notice in clear and plain language	Under Clause 5(2), the DPDPB 2023 mandates Data Fiduciaries to provide notice informing Data Principal (a) the purpose for which the personal data is collected for the	

	<p>containing a description of personal data of the Data Principal collected by the Data Fiduciary and the purpose for which such personal data has been processed as soon as it is reasonably practicable for the actions commenced before the Act.</p>	<p>commencement of the Act, (b) the manner in which rights can be exercised and (c) the manner in which Data Principal can complain to the Data Protection Board.</p> <p>Also, Clause 5(2)(b) mentions that the Data Fiduciary may continue to process the personal data until and unless the Data Principal withdraws her consent.</p>	
Consent			
Obligations of Consent Manager	<p>There is no provision which states that the Consent Manager may act in a manner subject to the obligations prescribed.</p>	<p>Under Clause 6(8), the DPDPB 2023 states that the Consent Manager shall be accountable to the Data Principal and shall act on her behalf in such manner and subject to such obligations as may be prescribed.</p>	<p>The prescriptions under the bill for Consent Managers must be in tandem with other existing frameworks for Consent Managers prescribed by other sectoral regulators. For instance, following the draft DEPA policy, the Reserve Bank of India (RBI) notified the Master Direction for Non-Banking Financial Company - Account Aggregator in 2016. In September 2021, the Account Aggregator system was launched. Licensed under the category of NBFC, the Account Aggregator (NBFC-AA) are the Consent Managers that will collect and share consumers' financial information with their consent.</p>
Certain Legitimate Uses			
Voluntary Processing	<p>Under Clause 8(1), the DPDPB 2022</p>	<p>Under Clause 7(a), the DPDPB 2023 sets the</p>	<p>The premise of deemed consent has changed in</p>

	<p>sets the context for deemed consent where it states that the Data Principal voluntarily provides her personal data to the Data Fiduciary, and it is reasonably expected that she would provide such personal data.</p>	<p>context for deemed consent as when, for the specified purposes for which the Data Principal has voluntarily provided her personal data to the Data Fiduciary, and in respect of which she has not indicated to the Data Fiduciary that she does not consent to the use of her personal data.</p>	<p>DPDPB 2023. Rather than broadly mentioning that deemed consent will apply to all the reasonably expected scenarios, the wording of the provision is narrowed. Now, the bill states that if the Data Principal voluntarily provides a Data Fiduciary with her personal data and requests Data Fiduciary for a particular service, it is deemed that the Data Principal has provided consent for the “specified purposes” and did not restrict the Data Fiduciaries from processing it for that purpose.</p>
<p>Performance of Functions by State</p>	<p>Under Clause 8(2), the bill states that State actors can, under any law for the time being in force, or the provision of any service or benefit to the Data Principal, or the issuance of any certificate, licence or permit any action or activity of the Data Principal.</p>	<p>In addition to issuing any certificate, licence or permit for any action or activity of the Data Principal, under Clause 7(b)(i), DPDPB 2023 also added subsidies, benefits and services to the list of state functions.</p> <p>Under 7(b)(ii), the DPDPB 2023 states that this provision only applies to such personal data which is available in digital form, or digitised.</p> <p>Besides, the bill states state actors can avail deemed consent subject to standards followed by the state or such instrumentality for related processing</p>	<p>Application of deemed consent for the performance of activities by state actors has significantly evolved in DPDPB 2023, where (a) the scope of activities is enhanced to include subsidy, benefit, and services (b) scope is defined in terms of which data this provision applies and (c) deemed consent is subjected to compliance to the policy as issued by the Central Government or any law for the time being in force for the governance of such data.</p>

		being in accordance with the policy issued by the Central Government or any law for the time being in force for the governance of such data.	
Performance of Legal Functions	Under Clause 8(3), the deemed consent applies for compliance with any judgement or an order issued under any law.	Under Clause 7(e), deemed consent applies for compliance with any judgement or order issued under any law for the time being in force in India or any judgement or order relating to claims of a contractual or civil nature under any law for the time being in force outside India.	The DPDPB 2023 has expanded the geographic scope of the applications of deemed consent where it applies to law for the time being in force outside India.
For Employment Purpose	Under Clause 8(7), the bill lists employment purposes for which deemed consent could apply.	Under 7(i), the bill lists employment purposes for which deemed consent could apply while removing the purpose of verifying attendance and assessing performance.	This implies that the employer must get the employee's consent to process digital personal data for attendance verification and performance review.
Performance of the Public Interest Operations	Under Clause 8(8), the bill lists conditions under which deemed consent applies in performing public interest operations.	The application of deemed consent for public interest operations is removed from DPDPB 2023, while some scenarios are absorbed under the exemptions section.	Removal of public interest as a criterion for availing of deemed consent might have various implications. Firstly, removing "processing of publicly available personal data" (except personal data made publicly available by the Data Principals themselves) under public interest as a criterion for deemed consent, might impact new AI evolutions like Generative AI.

			<p>This removal indicates that Generative AI solutions and language models shall collect and process publicly available personal information (except personal data made publicly available by the Data Principals themselves) only after obtaining consent from Data Principals at the commencement of its processing.</p> <p>Secondly, removing “credit scoring” provides the right to Data Principals to question the credit scoring industry on their data collection processes and what kind of data they use about them for profiling. Besides, it also indicates that credit scoring agencies might need to get consent from the Data Principals for processing their digital personal data for generating their credit scores.</p> <p>Thirdly, the DPDPB 2022 did incorporate the “operation of search engines for processing of publicly available personal data ” as one of the criteria to exercise deemed consent. This criterion which applies to deemed consent is removed from DPDPB 2023. Removing this specific provision might affect certain functions of the search engines.</p>
<p>For Fair and Reasonable Purpose</p>	<p>Under Clause 8(9), the bill lays out the conditions under which deemed consent applies for any fair and</p>	<p>The application of deemed consent for fair and reasonable purposes is removed from DPDPB 2022.</p>	<p>Removal of this provision might cause implications for operation of businesses.</p>

	reasonable purpose.		
General Obligations of Data Fiduciary			
Engaging Data Processor	Under Clause 9(9), the DPDPB 2022 allowed Data Fiduciaries to engage with Data Processors for specified purposes only under a valid contract. Besides, if the contract with Data Fiduciaries permits, data processors can involve another data processor for specified purposes.	Under Clause 8(2), the DPDPB 2023 allows Data Fiduciaries to engage with Data Processors for specified purposes only under a valid contract.	The delegation power of data processors is removed in this version of the bill where the bill doesn't allow further transfer of data by the data processor to another data processor.
The onus of having Reasonable Security Standards	Under Clause 9(4), the DPDPB 2022, places the onus of taking reasonable security safeguards to prevent personal data breaches on both Data Fiduciaries and Data Processors	Under Clause 8(5), the DPDPB 2023, places the onus of taking reasonable security safeguards to prevent personal data breach on Data Fiduciaries.	Placing responsibility over Data Fiduciaries to ensure data processors take reasonable security safeguards to prevent a personal data breach will streamline the process.
Data Breach Notification	Under Clause 9(5), the DPDPB 2022, both Data Fiduciaries and data processors are obliged to notify the Board and each affected Data Principal about the data breach in such form and manner as may be prescribed.	Under Clause 8(6), the DPDPB 2023, Data Fiduciaries are obliged to notify the Board and each affected Data Principal about the data breach in such form and manner as may be prescribed.	This is a step in the right direction as it is better to have Data Fiduciaries notify about data breaches which also streamlines the process.
Data Expunction	Under Clause 9(6), the DPDPB 2022	Under Clause 8(7)(a), the DPDPB 2023	The broad indication on business purpose as a criterion

	<p>obliges Data Fiduciaries to delete the data of Data Principals once the purpose of the collection is over and retention is no longer necessary for legal or business purposes.</p>	<p>obliges Data Fiduciaries to delete the data of Data Principals once they have withdrawn their consent, the purpose of the collection is over, and retention is no longer necessary for legal purposes.</p> <p>Besides, Under Clause 8(7)(b) also places the onus on the Data Fiduciaries to ensure that the data processor who they had engaged also deletes the data.</p> <p>Also, under Clause 8(8), the bill mentions that the purpose mentioned under Clause 8(7)(a) shall be deemed no longer be served if the Data Principals stop approaching the Data Fiduciary for the performance of the specified purpose or exercise of any of her rights in relation to such processing.</p>	<p>for which the data can be retained is removed. Besides, the onus is on Data Fiduciaries to ensure that data processors delete the data. In addition to this, the Data Fiduciaries are obliged to delete the data on consent revocation.</p>
<p>Additional obligations in relation to the processing of personal data of Children</p>	<p>Under Clause 10, the DPDPB 2022 puts additional obligations in relation to the processing of the personal data of children. Clause 10 provides that a Data Fiduciary has to obtain parental</p>	<p>Under Clause 9, additional obligations are also extended to persons with disability.</p> <p>Under Clause 9, the DPDPB 2023 prescribes similar safeguards as DPDPB 2022; however, an</p>	<p>Extending additional obligations for processing the personal data of persons with disability may cause confusion. Firstly, when the scope of these provisions pertains to children extending the same to a disabled person who may or may not be a child might cause confusion. Secondly, creating two different processes for</p>

	<p>consent (including consent of the lawful guardian) before processing personal data related to a child. Further, Data Fiduciaries are barred from tracking or behavioural monitoring or targeted advertising at children. However, an exception has been made for the purpose, which will be prescribed later, where parental consent may not be taken, and behavioural monitoring or targeted advertising will be allowed.</p>	<p>exemption will be made for the class of Data Fiduciaries or a specific purpose which will be prescribed later.</p> <p>In addition, on a case-by-case basis, under Clause 9(5), the government will make age-based exemption for Data Fiduciaries who have ensured the safety of processing children's data.</p>	<p>processing data of Data Principals who are above age 18 (as a disabled person could be above 18) might cause business concerns. Thirdly, it is difficult to determine and verify whether a Data Principal is disabled in a digital setting.</p> <p>Changes in the DPDPB 2023 regarding processing children's data where an exemption to the class of Data Fiduciaries or a specific purpose can be made are steps in the right direction. However, more clarity would be needed regarding the parameters and processes to be followed while determining the exemptions for the class of Data Fiduciaries.</p>
<p>Determining Significant Data Fiduciary</p>	<p>Under Clause 11, DPDPB 2022 introduced the concept of Significant Data Fiduciary (SDF), where certain Data Fiduciaries, as notified by the central government, will be Significant Data Fiduciaries. The decision will be taken after assessing relevant factors such as the volume of data, risk or harm, the risk to</p>	<p>Under Clause 10, DPDPB 2023 retains the concept of SDF, however, there are key changes in the determining factors: (a) One of determining factors has changed to risk to the rights of the Data Principal as the bill moved away from a harm-based approach to the right-based approach (as discussed in as Chapter 1) (b) open-ended provision for listing out other</p>	<p>Removing the provision on prescribing other factors it may consider necessary for determining SDF will bring certainty to business operations. However, the definition is still broad and the threshold for determining the SDF using some of the determining factors is not specified.</p>

	electoral democracy, the potential impact on the sovereignty and the integrity of India, public order etc.	determining factors is removed.	
Impact Assessment for SDF	Under Clause 11, the DPDPB 2022 defines the “Data Protection Impact Assessment” as a process comprising description, purpose, assessment of harm, measures for managing the risk of harm and such other matters with respect to the processing of personal data.	As discussed above, under Clause 10(1)(b), the DPDPB 2023 has replaced the harms with the risks to the rights of the Data Principals.	While the bill tries to bring consistency in objectives and terminology, more direction would be needed to determine the risk to the rights of Data Principals.
Measures to be taken by SDF	Under Clause 11(2), DPDPB 2022 lists down additional measures to be taken by SDFs, such as the appointment of a Data Protection Officer, the appointment of an Independent Data Auditor, and undertaking Data Protection Impact Assessment and periodic audit.	In addition to the additional obligations listed in DPDPB 2022, under clause 10(2)(c)(iii), DPDPB 2023 opens the room for more measures to be prescribed in the future.	This additional provision for more measures to be prescribed in the future might create uncertainty for businesses. Moreover, due to the significance of SDFs, they have been subjected to additional obligations under different legislations and upcoming digital laws, therefore scope for more measures might lead towards over-regulation.

Rights and Duties of Data Principals

Chapter 3 of the DPDPB 2023 vest various rights on the Data Principals. In addition, the chapter also lists out the duties of the Data Principal while availing those rights. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Right to Access Information about Personal Data			
Exemptions to Right to Access Information about Personal Data	The DPDPB 2022 does not include exemptions to the right to access information about personal data.	Under Clause 11(2), the DPDPB 2023 lays out that Data Fiduciaries can hold back from disclosing the identity of any other Data Fiduciaries and data processors with whom the personal data has been shared by such Data Fiduciary and other related information if the data imported by the Data Fiduciaries is for the purpose of prevention or detection, or investigation of offences or cyber incidents or for prosecution or punishment of offences.	This additional clause in DPDPB 2023 is crucial for law enforcement purposes to ensure the confidentiality of investigations. However, a blanket exemption to Data Fiduciaries without any checks and balances may dilute accountability.

Right of Grievance Redressal				
Availability of Means to Redress Grievance	of to	Under Clause 14(1), the DPDPB 2022 states that a Data Principal shall have the right to readily available means of registering a grievance with a Data Fiduciary.	Under Clause 13(1), the DPDPB 2023 states that a Data Principal shall have the right to have readily available means of grievance redressal provided by a Data Fiduciary or Consent Manager.	The DPDPB 2023 has extended the provision for establishing a grievance redressal mechanism to Consent Managers. Therefore, as we move forward, any prescription related to this clause must be in tandem with the other sectoral regulations of Consent Managers to avoid regulatory arbitrage.
Timeline to Resolve Grievance	to	Under Clause 14(2), the DPDPB 2022 mandates Data Fiduciaries to resolve the grievance within seven days.	Under Clause 13(2), the DPDPB 2023 states that the Data Fiduciary or Consent Manager shall respond to any grievances within such period as may be prescribed from the date of its receipt.	The time period to be prescribed to address grievances needs to be longer than the 7 days as prescribed in the previous version of the bill for effectively addressing grievances.

Special Provisions

Through this chapter, the bill sets out the provisions for cross-border data transfers and also lays down the exemptions given to Data Fiduciaries under legitimate reasons. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Processing of personal data outside India			
Listing Countries	Under Clause 17, the DPDPB 2022 allows cross-border data transfers to such countries or territories outside India, which the Central Government will notify on terms and conditions.	Under Clause 16, the DPDPB 2023 allows cross-border data transfers to any countries or territories outside India for processing data unless the government restricts such flows to such country or territory outside India as may be so notified.	While the government allows cross-border data transfers for processing, there is less clarity regarding mechanisms (like Binding Corporate Rules (BCR), Contractual Clauses etc) data Fiduciaries can follow to transfer the data. Also, as the government will be notifying countries where the data can't flow (through a negative list), procedural clarity and determining factors must be laid out clearly to weed out ambiguity.
Sectoral Regulations	Provision related to the applicability of sectoral regulations, was not there in DPDPB 2022.	Under Clause 16(2), the DPDPB 2023 states that nothing within Clause 17 of this bill will restrict any law for the time being in force in India that provides for a higher degree of protection or restriction	This recognition of sectoral regulations and guidance may cross paths with some of the measures to be established through DPDPB 2023 for allowing cross-border data transfers. While sectoral regulation will take precedence over DPDPB

		on the transfer of personal data by a Data Fiduciary outside India.	2023 in case of cross-border data transfers, the rules will need to be clear and precise to implement this provision.
Exemptions			
Exemptions to Judiciary and Government Bodies	Under Clause 18(1)(b), the DPDPB 2022, provides an exemption to any court or tribunal or any other body which performs any judicial or quasi-judicial function from certain provisions of the bill.	In addition to providing an exemption to any court or tribunal or any other body, under Clause 17(1)(b), DPDPB 2023 also provides an exemption to regulators and supervisory authorities.	The addition of regulators and supervisory authorities within the bill's provision clarifies how this bill will impact their processes and functions.
Exemptions for Scheme of Compromise or Arrangement or Merger or Amalgamation	Provisions related to exemptions for a scheme of compromise or arrangement or merger or amalgamation were not there in DPDPB 2022.	Under Clause 17(1)(e), the DPDPB 2023 provides exemptions, if the processing is necessary for a scheme of compromise or arrangement or merger or amalgamation of two or more companies or reconstruction by way of demerger or otherwise of a company, or transfer of undertaking of one or more company to another company, or involving division of one or more, approved by a court or tribunal or other authority competent to do so by law for the time being in force.	There is a need for clarity on the scope of processing of data. It is necessary to clarify that this provision means that the personal data collected and held by a Data Fiduciary can be transferred to another Data Fiduciary on the act of merger, amalgamation etc., without the consent of Data Principals.
Exemptions for Processing for the purpose of ascertaining the	Provisions related to exemptions for the purpose of ascertaining	Under Clause 17(1)(f), the DPDPB 2023 exempts the processing for the purpose of	This exemption from the bill might aid financial service providers and debt recovery agencies in terms of

<p>financial information and assets and liabilities of any person and Debt Recovery</p>	<p>whereabouts and debt recovery were not there in DPDPB 2022.</p>	<p>ascertaining financial information and assets and liabilities of any person from whom a claim is due against a debt owed by her, subject to such processing is in accordance with the provisions regarding disclosure of information or data in any other law for the time being in force.</p>	<p>recovering non-performing assets. However, the blanket exemption could also bring negative impact, as there have been instances where Data Fiduciaries have misused personal data for debt recovery purposes.</p>
<p>Exemptions Notification for Data Fiduciaries or Classes of Data Fiduciaries</p>	<p>Provision related to exemptions notification for Data Fiduciaries or classes of Data Fiduciaries was not there in DPDPB 2022.</p>	<p>Under Clause 17(5), the DPDPB 2023 states that before the expiry of five years from the date of commencement of this Act, the Central Government will declare by a notification that any provision of this Act shall not apply to such Data Fiduciary or classes of Data Fiduciaries for such period as may be specified in the notification.</p>	<p>This clause provides room for exempting certain legitimate use cases from certain provisions of the bill.</p> <p>Since organisations and businesses will require time to prepare and put the existing systems in place and streamline processes to comply with the bill's obligations, exemptions from certain provisions of the bill for a given period would aid them in compliance and implementation.</p>

Data Protection Board

Through this chapter, the bill lays out the provisions for setting up a Data Protection Board. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Data Protection Board of India			
Composition of Data Protection Board	As per clause 19(2) of the DPDPB 2022, the Central Government will prescribe the strength and composition of the Board, terms and conditions of appointment and service of its Chairperson and other Members.	<p>Under Clause 19(3), it is provided that members and chairperson must possess special knowledge or practical experience in data governance, administration or implementation of laws related to social or consumer protection, dispute resolution, information and communication technology, digital economy, law, regulation or techno-regulation, or in any other field which in the opinion of the Central Government.</p> <p>Under Clause 20 and Clause 21, the DPDPB 2023 lays out the conditions for holding office and removal from office.</p>	Listing out terms and conditions for the appointment and service of its Chairperson and other Members brings more clarity than the previous bill version. However, the selection process of the board is executive-driven where the Central Government will select the chairperson and members of DPB in addition to their terms of office.

Powers, Functions and Procedure to be Followed by Board

Through this chapter, the bill lays out the functions of the Data Protection Board. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Powers and functions of Board			
Enhancing Functions of Data Protection Board	Under Clause 20(1)(b), the Central Government could assign functions to the Board under the provisions of this Act or under any other law by an order.	This provision is removed from the DPDPB 2023.	The board's function stated in the DPDPB 2022 is significantly changed in terms of its actions protecting the interest of the Data Principal and promoting awareness about data protection, while emphasis is made on determining non-compliance with provisions of this Act and imposing penalties. Clause 20(1)(b) of the DPDPB 2022 gave an opportunity to enhance the functions of the Data Protection Board.

Appeal and Alternate Dispute Resolution

The chapter provides the procedure to be followed for appealing the decision of the board. The chapter also discusses the process to be followed by the Appellate Tribunal while disposing of the appeal made to the same. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Appeal to Appellate Tribunal			
Appeal to TDSAT	There were no provisions related to the appellate tribunal in the previous version of the bill.	Under Clause 29, the DPDPB 2023 directs that any person aggrieved by an order or direction made by the Board under this Act may prefer an appeal before the Appellate Tribunal which is TDSAT	Making TDSAT the appellate tribunal brings out various convergences related issues, blaring the differentiation between Telecom Services and Digital Services which operationally and technically function distinctly. In addition to this TDSAT may not have the capacity and technical expertise for handling the pluralistic aspect of the Data Principal/fiduciary, covering for diversity in Data Principal/Fiduciary and contextual heterogeneity in the issues.

Penalties and Adjudication

The chapter discusses financial penalties for non-compliance. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Penalties			
Upper Limit	Under Clause 25(1), the board can impose such a financial penalty as specified in Schedule 1, not exceeding rupees five hundred crore in each instance.	Under Clause 33(1), the board can impose such monetary penalty specified in the Schedule.	The upper limit of 500 crores in terms of imposing a fine at each instance is removed from the DPDPB 2023. This means the Data Fiduciaries can be fined beyond 500 crores at each instance.

Miscellaneous

The chapter discusses the rulemaking powers of the central government and how we strive for consistency with other related laws. The chapter also discusses the powers vested in the government in amending some of the clauses within this legislation and also lays out some of the amendments/omitting needed from other legislations. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Power to Call for Information			
Seeking information from Board and Data Fiduciaries	Provision related to power to call for information was not there in DPDPB 2022.	Under Clause 36, the DPDPB 2023 states that the Central Government may, for the purposes of this Act, require the Board and any Data Fiduciary or intermediaries to furnish such information as the Central Government may call for.	The terms “such information” which might include personal information, non-personal information, etc., to be furnished to the Central Government. Secondly, the government seeking information from the board contradicts clause 21(1), which discusses the board's independence.
Power of Central Government to Issue Directions			
Information Takedown	Under the DPDPB 2022 no provision talked about the powers of the Central Government to issue blocking orders to	Under Clause 37, the DPDPB 2023 provides power to the Central Government to issue directions advised by the Data	In an entirely new move, in the DPDPB Bill, 2023, there is a clause empowering the Central Government to issue blocking orders to Data Fiduciaries. Clause 37 provides two grounds which need to be satisfied before

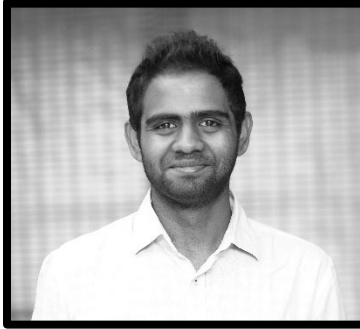
	Data Fiduciaries or intermediaries	Protection Board, which might lead to the government ordering the blocking of access to any information in the interest of the general public.	<p>the Central Government can undertake such measures. Firstly, the Data Protection Board (DPB) needs to intimate the Central Government that it has imposed a monetary penalty on a Data Fiduciary in two or more instances and secondly, the DPB, in the public interest, must issue advice to the Central Government to block public access to information hosted, transmitted, received etc. by the given Data Fiduciary.</p> <p>Pursuant to the fulfilment of both these conditions, the Central government needs to give an opportunity to be heard to the said Data Fiduciary and then it can decide (reasons for the decision have to be noted in writing) whether or not to issue an order for blocking information access.</p>
Power to Make Rules			
Listing the Rules and Clarification	Provisions related to listing the rules and clarification was not in DPDPB 2022.	Under Clause 40(1), the DPDPB 2023 provides a non-exhaustive list of rules to be made on matters related to the bill.	This provision clarifies where the central government is vested with powers to make subordinate legislation. Having said that, the list is also not exhaustive.
Amendments to certain Acts			
Amendment to the Telecom Regulatory Authority of India Act, 1997	There were no amendments to the Telecom Regulatory Authority of India Act, 1997 proposed under DPDPB 2022	Under Clause 44(1), the DPDPB 2023 proposes an amendment to Section 14 of Telecom Regulatory Authority of India Act, 1997.	This amendment is done to extend TDSAT as the appellate tribunal under the DPDPB 2023.

Schedule

In continuation to Chapter V on breaches, resolutions and penalties, this schedule lays out the list of penalties to be levied on Data Fiduciaries and Data Principals on the specific subject matter of breach. The following table provides our comparative analysis of this chapter of the Bill.

Synopsis	Digital Personal Data Protection Bill 2022	Digital Personal Data Protection Bill 2023	Explanation
Breach Providing Safeguards in	Under DPDPB 2022, liability and penalties were levied on both Data Fiduciaries and data processors for not taking reasonable security safeguards to prevent a personal data breach.	Under DPDPB 2023, the liability and penalties are only on fiduciaries for not taking reasonable security safeguards to prevent a personal data breach.	This provision recognises the contractual liability that data processors have with Data Fiduciaries.
Laps Voluntary Undertaking in	Under DPDPB 2022, no provisions talk about penalties for laps in the voluntary undertaking.	The DPDPB 2023 states that a lapse in the voluntary undertaking will lead to penalties up to the extent applicable for the breach in respect of which the proceedings under Section 21 were instituted.	This provision talks about how lapse in voluntary undertaking will be handled.

AUTHOR



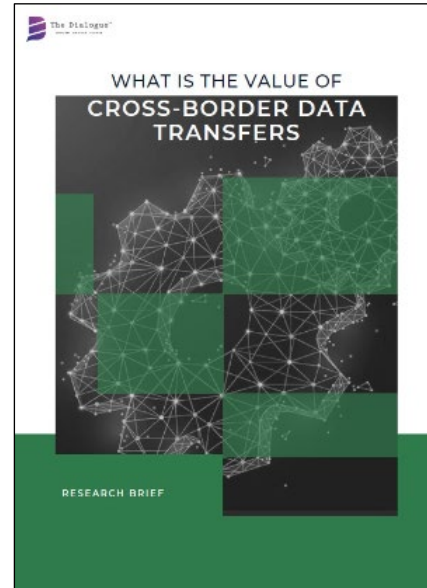
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