



PUNE BRANCH OF WICASA OF ICAI

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

NEWSLETTER

Issue No. 10 - NOVEMBER 2021

(Subscribers copy not for sale)



DEEPALI SONI
CRO066605

FACELESS HEARING

The income tax department on October 7, 2019 launched its faceless e-assessment scheme for taxpayers. Under the scheme, there would be no physical interface between an assessing officer and an Assessee.

The plan was first introduced in the Union Budget 2019 by finance minister Nirmala Sitharaman. Sitharaman told the parliament that the existing system of scrutiny assessments in the Income Tax Department involves a high level of personal interaction between the taxpayer and the department, which leads to certain undesirable practices on the part of tax officials. While the word corruption was not used specifically, it's clearly the target here.

'To eliminate such instances, and to give shape to the vision of the Prime Minister, a scheme of faceless assessment in electronic mode involving no human interface is being launched this year in a phased manner,' she added. To begin with, 58,322 income tax cases will be taken up by the National e-Assessment Centre.

Further, a total of 2,686 officials of the I-T department have been deputed for implementation of the scheme.

STRUCTURE:-

NEAC will be the top body to send all notices and communication electronically. Under it would be eight regional e-assessment centers (ReACs) in Delhi, Mumbai, Chennai, Kolkata, Ahmedabad, Pune, Bengaluru and Hyderabad. Under these centers, there would be four units - technical, review, assessment and verification.

The assessment unit would identify issues, seek information and analyze material to frame draft assessment orders. The verification unit would conduct inquiry, examine books of account, examine witnesses and record statements through video conferencing.

The technical unit would provide advice on legal, accounting, forensic, information technology, valuation, transfer pricing, and data analytics issues. The review unit would

review the draft assessment order - whether material evidence is brought on record, points of facts and law are incorporated, application of judicial decisions is considered and the arithmetic correctness.

NEAC would assign cases to the assessment unit, verification unit and technical unit through an automated allocation system. It would then select draft assessment orders for review and allocate it to the review unit through an automated allocation system. NEAC would provide an opportunity to the taxpayer concerned before finalizing the order. After finalizing the assessment order, it would transfer all electronic records to the jurisdictional assessing officer for post-assessment work such as collecting penalty.

HOW IT WILL WORK:-

Taxpayers will receive notices on their registered email address and in their accounts held on the IT department's portal "www.incometaxindiaefiling.gov.in." A real-time alert by way of SMS will also be sent to their registered mobile numbers intimating receipt of such notice.

Each notice or any form of communication from the IT department will hold a document identification number (DIN). All replies to the notices from the IT department have to be made electronically in the account in the e-filing portal and not personally or through post (unless it is an exceptional case).

Assesses have 15 days to respond to the notices. The response shall be considered successfully submitted when the individual receives the acknowledgement from the National e-assessment Centre.

After receiving a reply from the taxpayer, NEAC will allocate the case to an assessing officer at the regional level through an automated system. Regional assessments requiring assistance from the verification unit or technical assistance from the technical unit shall go through the automated allocation system.

If the regional assessment unit requires further information or document from the Assessee, the request will first be made to the National e-assessment centre. A draft assessment order will be sent from the regional unit to the National e-assessment centre. A personal hearing would be allowed in certain cases.

Hearings of the cases will be conducted exclusively through video links or any other such facility that does not require the Assessee or his/her representative to be physically present. The new system is hoped to reduce harassment of taxpayers and ensure that all tax proceedings including scrutiny are done on a centralized basis without direct interaction with the assesses.

TECHNOLOGY TO BRING ANONYMITY IN PROCEEDING

In order to ensure that vested interests do not obstruct the due course of law, the Income-tax Department proposes to align its operations with contemporary technology techniques being-

- (a)'Automated allocation system' for randomized allocation of cases using inter alia artificial intelligence and machine learning;
- (b)'Automated examination tool' for a standardized examination of orders using inter alia artificial intelligence and machine learning;
- (c)'Mobile app' providing a host of utilities to the Assessee or the Tax payer;
- (d)'Video Conference' for audio and video communication interface between Revenue authorities and taxpayer.

PROCEDURE AFTER E ASSESSMENT:-

The National e-assessment Centre shall, after completion of the assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over such case, for —

- (a) Imposition of penalty;
- (b) Collection and recovery of demand;
- (c) Rectification of mistake;
- (d) Giving effect to appellate orders;
- (e) Submission of remand report, or any other report to be furnished before CIT (A) or courts;
- (f) Proposal seeking sanction for launch of prosecution and filing of complaint before the Court;

Exceptions are carved out for certain types of proceedings such as search and seizure cases, re-assessments, best judgement assessments, etc., where the assessment would be done through personal hearing process.

PROCEDURE FOR PENALTY:-

Any unit may, in the course of assessment proceedings, for non-compliance of any notice, direction or order issued under this scheme on the part of the taxpayer or any other person, send recommendation for initiation of any penalty proceedings under the income tax law, against such taxpayer or any other person, as the case may be, to the National e-Assessment Centre, if it considers necessary or expedient to do so The

National e-Assessment Centre shall, on receipt of such recommendation, serve a notice on the taxpayer or any other person, as the case may be, calling upon him to show cause as to why penalty should not be imposed on him under the income tax law The response to show –

cause notice furnished by the taxpayer or any other person, if any, shall be sent by the National e-Assessment Centre to the concerned unit which has made the recommendation for penalty The said unit shall, after taking into consideration the response furnished by the taxpayer or any other person, as the case may be:

- a) Make a draft order of penalty and send a copy of such draft to National e-Assessment Centre; or
- b) Waive the penalty after recording reasons, under intimation to the National e-Assessment Centre.

The National e-Assessment Centre shall levy the penalty as per the said draft order of penalty and serve a copy of the same on the taxpayer or any other person, as the case may be.

PROCEDURE FOR APPEAL:-

An appeal against an assessment order made by the National e-Assessment Centre under this scheme can be filed before the Commissioner (Appeals) having jurisdiction over the jurisdictional Assessing Officer.

TRANSFER OF CASE TO AO DURING PROCEEDING:

The National e-assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case.

OTHER ASPECTS:-

A person is not required to appear either personally or through authorized representative in connection with any proceedings under this scheme before the income tax authority at the National e-Assessment Centre or Regional e-Assessment Centre or any unit set up under this scheme. In a case where a modification is proposed in the draft assessment order, the taxpayer will be given an opportunity to make submissions against such modifications. The taxpayer or his authorized representative is also entitled to a personal hearing before income tax authority in any unit under this scheme. Such hearing would be conducted exclusively through video conferencing, including through video telephony, in accordance with the procedure laid down by the CBDT.

An income tax authority has the power to examine a taxpayer or record the statement of any taxpayer under this scheme. The income tax authority would do the same

through video conferencing or video telephony. For the purpose of facilitating the scheme, the CBDT shall establish suitable facilities for video conferencing and video telephony at such locations as may be necessary.

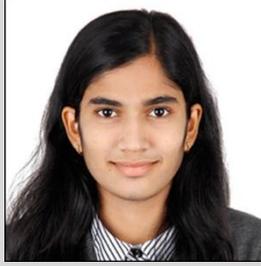
DIFFICULTIES IN E ASSESSMENT:-

Generally, an assessment would involve a submission comprising 300+ printed pages. Huge workload would be expected as the same would have to be converted into digital format. Since it is a new beginning, we may expect technical glitches like unexpected rush and crashing of servers. The assesses will find the compliance cumbersome while uploading their documents. Automated systems are not free from errors therefore technical glitches and bugs would have to be fixed as soon as possible in real-time too. Precautions are to be taken like ensuring that fields used in the return are consistent as it is totally automated. Clerical errors without having a bearing on the tax payable may trigger penalty proceed. Ensure that mobile number and the e-mail id are updated, as the assesses would be notified through an SMS/e-mail. Awareness of Assessee is most important in this scheme because in most of the cases Assessee does not understand the messages as well as mails from department. Many times see fake mails received in name of Income Tax department it may also create harassment or fear to Assessee. In most of the cases it seen that department asks documents from Assessee as well as same documents from the respective department like Bank statement, Challan Deposits etc.

It is lengthy work for Department as well as Assessee. A person who has filed his returns in the electronic mode is expected to stay updated on any communication received. Had he not been savvy, he would not have been able to file his returns on the portal. The assessing officers will face difficulties and will not be able to make proper assessment without looking into books of accounts of taxpayers.

Low levels of digital connectivity and awareness in India's hinterland, requiring taxpayers to respond within 15 days to demand notices through the e-filing system, is a tall ask. Given the complex tax laws, it will take a lot of toeing and froing and uploading of voluminous documents, before a taxpayer can convince the assessing unit of his tax claims. There are also enough exceptions built into the new rules that offer ample scope for a determined assessing officer to side-line the 'faceless' process.

Thank You



SHREENIDHI SHETTY

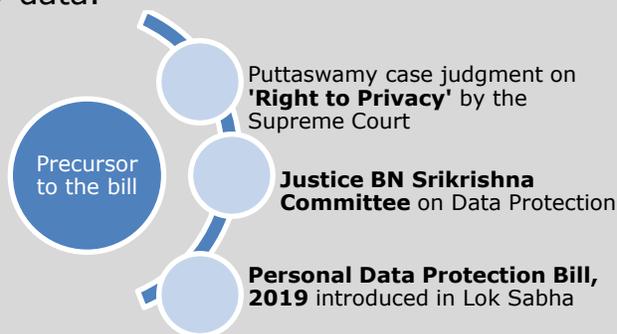
WRO0581384

Data Protection Bill

India's digital data market is projected to become the world's largest, with over 600 million-plus active internet users, standing only next to China. It is forecasted that the **data will become "new wealth"** for developing the nation's economy.

According to recent studies, the number of internet users in rural areas will soon increase by 30-40% in the next couple of years. Due to this rapid digital transformation there is a growing focus on data security threats, which can directly impact India's economic development.

In India, usage of personal data or information of citizens is currently regulated by the Rules notified under the **Information Technology (IT) Act, 2000**. These Rules specify security safeguards for data collection, disclosure and transfer of information for entities processing the data. In the light of the above, it is the need of the hour to understand the events which lead to it and the safeguards in place to tackle the challenge posed by data.



A. HISTORY

The Apex Court held in the case of Puttaswamy that **right to privacy is a fundamental right** on 24 August **2017**. The Supreme Court noted in its order that the union government had constituted a committee chaired by Justice BN Srikrishna, to **review data protection norms** in the country and to make its recommendations. The committee submitted its report on July 27, **2018** along with a **draft** of the **Personal Data Protection Bill, 2018**.

On December 11, **2019**, the **Personal Data Protection Bill, 2019** was **introduced** in Lok Sabha and was referred to a **Joint Parliamentary Committee** for detailed **examination**, which engaged in public consultation in February **2020**.

Once passed, the law promises a huge improvement on current Indian privacy law, which is both inadequate and improperly enforced. The 2019 Bill seeks to:

- (i) **Protect the privacy** of individuals with respect to their personal data,
- (ii) Create a **framework for processing** such personal data, and
- (iii) Establish a **Data Protection Authority** for these purposes.

A. ABOUT THE BILL

Highlights of the Bill

The Bill provides a framework for **safeguarding** the privacy of personal **data of individuals** (data principals) which is processed by entities (data fiduciaries).

Processing can only be done for a **specific purpose**, after obtaining consent of the data principal. Such consent is not required in case of a medical emergency or by the State for providing benefits or services.

The Bill provides the data principal with **certain rights**. These include the right to **correct** their data, **confirm** whether the data has been processed, or to **restrict** its continued disclosure.

The Bill allows **exemptions** from many of its provisions when the data is processed in the interest of **national security**, or for prevention, investigation or prosecution of offences.

Sensitive personal data such as financial and health data, can be transferred abroad, but should also be **stored within India**.

The Bill sets up a national-level **Data Protection Authority** (DPA) to supervise and regulate data fiduciaries.

Key Issues and Analysis

Personal data processed for prevention, detection, **investigation and prosecution** of an offence is **exempted** from most provisions of the Bill. Such an exemption may be too broad.

The State does **not need** to obtain a person's **consent** to process their data for providing a service. Thus, in case of commercial services, public sector entities (which are part of the State) are treated differently from their private sector competitors.

Mandatory local storage of sensitive personal data has certain advantages such as ease and speed of access to data for law enforcement agencies. However, it may also lead to additional **infrastructure costs** on data fiduciaries.

Fiduciaries are required to inform the **DPA** of a data breach only where such breach is likely to cause harm to the data principal. This may lead to fiduciaries under-reporting breaches in order to protect their market reputation.

It is not necessary for the adjudication officer to have a background in law. This **officer** has to judge cases related to the right to be forgotten, and may **not have** the requisite **knowledge of Constitutional law**.

Comparison of the Bill with international data protection laws

The table outlines some of the provisions in the proposed Bill which differ from international laws.

Country	European Union	Australia	Canada	India (proposed Bill)
Sensitive personal data	Does not include financial data, passwords	Does not include financial data, passwords	Not defined separately	Includes financial data, health data, does not include passwords.
Local storage of data	Not mandatory	Not mandatory. Sector-specific mandates, e.g., for health data	Not mandatory.	Local copy of sensitive personal data mandatory; exclusive local storage of critical personal data mandatory
Cross border transfer of data	Permitted if the receiving country has adequate standards of data protection (assessed by the European Commission).	Permitted if the processing entity has taken steps to ensure that the recipient does not breach country's privacy principles.	Permitted if the processing entity uses contractual or other means to ensure comparable level of protection.	Permitted (for some data) if approved by the regulator or prescribed by the government.
Exemptions	Public and national security, defence, judicial proceedings, domestic, journalistic, research and employment	Defence and intelligence agencies, federal courts, political parties, small businesses, journalistic and employment	No blanket exemptions. Specific exemptions from seeking consent, such as for journalistic	Sovereignty and integrity, national security, friendly relations, public order, prevention and prosecution of offences, research and journalistic

	purposes.	purposes	purposes, are allowed.	purposes, sandbox.
Penalties	Up to EUR 20 million, or 4% of previous year's worldwide annual turnover, whichever is higher. No jail term.	Up to AUD 2.1 million. No jail term except disclosure of information obtained during an emergency.	Up to CAD 1,00,000. No jail term.	Up to Rs 15 crore, or 4% of previous year's worldwide annual turnover. Imprisonment for reidentification of de-identified personal data (up to 3 years).

Categories of Data

Personal Data	Any characteristic, trait, attribute or any other feature of the identity of such natural person
Sensitive Personal Data	Financial data, health data, biometric data, genetic data, caste, religious or political belief or affiliation, etc.
Critical Data	Not been defined

Key Features

Data Fiduciary:

Any person, who alone or in conjunction with others determines the purpose and means of processing of personal data

Obligations of data fiduciary:

Any processing can only be done for a specific purpose and will be subject to data collection and storage limitations.

Grounds for processing personal data:

The processing of personal data of an individual by an entity only after taking consent of the individual. However, in the following circumstances, personal data can be processed without consent-

- (i) if required by the State for providing service or benefit to the individual,
- (ii) legal proceedings, or
- (iii) to respond to a medical emergency.

Social media intermediaries:

It includes intermediaries which enable online interaction between users and allow for sharing of information. All such intermediaries with users above a threshold, and whose actions can impact electoral democracy or public order, will have to provide a voluntary user verification mechanism for users in India.

Rights of the individual:

These include the right to-

- (i) confirm from the fiduciary on whether their data has been processed,
- (ii) seek correction of inaccurate, incomplete, or out-of-date personal data,
- (iii) seek erasure of personal data which is no longer necessary for the purpose it was processed, and
- (iv) restrict continuing disclosure of their data by a fiduciary, if it is no longer necessary for the purpose or consent is withdrawn.

Data Protection Authority (DPA):

- (i) take steps to protect interests of individuals,
- (ii) prevent misuse of personal data, and
- (iii) ensure compliance with the Act. It will consist of a chairperson and six members, with at least 10 years' expertise in the field of data protection, information technology or public administration.

Grievance redressal:

A data principal may raise a complaint of contravention of provisions of this Act which has caused or is likely to cause harm to them. The data fiduciary must resolve such a complaint in an expeditious manner (within 30 days). If the data principal is not satisfied with the manner in which the complaint is resolved, they may file a complaint to the DPA.

Transfer of data outside India:

Sensitive personal data may be transferred outside India for processing if explicit consent is provided for the same by the individual, and subject to certain additional conditions. However, a copy of such sensitive personal data should also be stored in India. Certain personal data notified as critical personal data by the government can only be processed in India.

Sharing of non-personal data and anonymized personal data with the government:

The central government may direct data fiduciaries to provide it with any: (i) non-personal data and (ii) anonymized personal data (where it is not possible to identify data principal) for better targeting of services.

B. CRITICISM OF CERTAIN PROVISIONS

What does the man who led the committee has to say about DPB

The retired Supreme Court judge, B.N. Srikrishna, who led the committee that came with the draft of the Personal Data Protection Bill, said it is a unique legislation and it is **in contrast with the draft**, which mentions no data will be processed without the consent of the person. He said the Bill gives autonomy to the government and if this is passed in its current form, it should be **challenged in the Supreme Court**.

Retired Judge Srikrishna said that the draft was built upon it in less than 18 months and mentioned all the **safeguards which are no longer part of the Bill**.

He went to add that the **government can at any time access** private data or government data agency data on **grounds of sovereignty or public order**.

Latest Update, December 2020

Ten members of the 30-member joint parliamentary committee on the Data Protection Bill, 2019, have **moved amendments against** the provision in the legislation giving power to the **Central government to exempt any agency of the government from application** of the Act. The members have said this clause makes the entire act infructuous.

The Bill seeks to provide protection of personal data of individuals and was introduced in December last year in Lok Sabha. It was referred to the joint parliament, headed by BJP MP Meenakshi Lekhi, in February this year.

Members have moved amendments to this contentious Clause 35 of the legislation.

The **wide ranges of issues raised by the members are** as following:

1. Invoking "sovereignty and integrity of India", "public order", "friendly relations with foreign states" and "security of the state", the legislation gives powers to the Central government to **suspend all or any of the provisions** of this Act for government agencies.
2. Some members want the act to be suitably amended, **vesting the power in Parliament instead of the Central government** to approve any such exemption and want judicial approval for it.
3. The powers given to the Central government for exemptions are all-encompassing so as to make the legislation **virtually infructuous**.
4. A member while moving his amendment to this clause, submitted that since **privacy** has been held to be a **fundamental right**, it, therefore, is subject to the rigors of Article 21 of the Constitution of India and an **exception cannot be made** for the government.

5. Several objections have also been raised regarding Clause 26 of the **legislation that deals with social media**, with five members moving amendments. A member has moved an amendment seeking changes to make it mandatory for every social media intermediary to identify all its subscribers.
6. The members also want that the Bill's **definition of "child" should be revised**. Presently as per the act, anyone below 18-years of age has been described as a child. A member wants the age to be lowered to 12-years, has argued that the present COVID-19 pandemic has forced digital education on children which leaves them vulnerable.