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Bangladesh's Data Protection Bill

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Of the few countries in Asia which do not have data privacy laws or Government Bills (i.e. North Korea, Cambodia, Laos, Myanmar, the Maldives and Afghanistan), Bangladesh is the most likely to enact such a law. The government released *The Data Protection Act, 2022* for public comment in April 2022, but it has not yet reached the floor of Bangladesh's unicameral Parliament. Bangladesh already has a right to information law, administered by a three-person Information Commission.

This article is a brief introduction to the Bill, its strengths and weaknesses. It will receive a more detailed analysis when it reaches Parliament.

Structure of the Bill

The Bill overrides all other laws currently in force (art. 7). It applies across the whole of the private and public sectors, acting within Bangladesh (art. 4(1)(a)).

The Bill will have extra-territorial application to processing outside Bangladesh involving Bangladeshi citizens (art. 4(1)(b)). Processing outside Bangladesh involving a business within Bangladesh, or involving offering goods or services or profiling of data subjects (art. 4(1)(c)) is also covered. A foreign data subject resident in Bangladesh 'shall have all his rights under this act where his data has been collected' (art. 17), the meaning of which is obscure.

There are no explicit rules governing exports of personal data outside Bangladesh, but the Data Protection Office (DPO) has power 'to order the suspension of data flows to a recipient in a foreign country ...' (art. 36(2)(b)(viii)). This potential of this provision to require extensive data localisation has led some business organisations to warn of potential excessive harm to data export trade.¹

The Act will not apply to processing of anonymised, encrypted or pseudonymous data (art. 4(2)). This reference to pseudonymous data is out of step with international standards, because it is still personal data.

Rights and obligations

Obligations of controllers and processors include (art. 5): no processing without consent obtained prior to processing; consent must be 'free, specific clear and capable of being withdrawn; minimal collection: 'not excessive or unnecessary'; all data to be destroyed permanently when no longer needed for the purpose for which collected; many other obligations concerning data quality; no uses made of the data except for the purpose of collection; duty to observe data security safeguards.

These obligations are repeated in more detail in other provisions (arts. 6, 7). There are exceptions for non-consensual processing (art. (7(5))), including processing for the protection

¹ 'Draft Data Protection Act may affect digital trade' *New Age Bangladesh* 7 July 2022 <<https://www.newagebd.net/article/175310/draft-data-protection-act-may-affect-digital-trade>>

of public interest (as prescribed) (art. 7(6)); and for data collection from 3rd parties (art. 10(2)). Conditions for processing sensitive data, or children's data are set out separately (arts. 11 and 12).

There is a separate requirement to protect 'the right of privacy' in data collection, processing and use (art. 9), but some aspects of privacy have constitutional protection, so art. 9 would be read in that context.²

The rights of data subjects include (Ch. VI, arts. 13-20): right to access data about oneself; right to obtain corrections; right to have those to whom personal data has been disclosed notified of corrections or updates; and right to withdraw consent to further processing of the data. There is a right of data portability: to receive the data in a 'structured, commonly used and machine-readable format. There are extensive rights to have data erased (art. 18), and to prevent its processing (art. 19). Controllers must be able to demonstrate compliance and have detailed transparency and security obligations (arts. 20-24). There are data retention and data breach notification obligations, as well as data audit obligations (arts. 28-30). A data protection officer must be employed, and organisations must ensure that 'privacy by design' is implemented (arts, 31-32).

Enforcement: Data Protection Office (DPO)

A Data Protection Office (regulator) must be established by the government, controlled by the Digital Security Agency, and headed by its Director-General (art. 35). It is subject to directions from time to time from the government (art. 63). It is therefore not independent. But it does have extensive investigative powers, and some enforcement powers. Its main powers are to order controllers and processors to comply with the Act, and the rights of data subjects (art. 36). It does not have any explicit powers to issue administrative fines, or order compensation payments, but it can initiate court proceedings for fines or compensation for breaches of the Act, with the maximum penalties or compensation being US\$ 5,000 (approx. 500,000 (5 lac) Bangladeshi rupees (taka)). The government may adopt further exemptions by regulations.

Conclusions

The Bill is subject to a lively debate within Bangladesh, including whether it provides sufficient protection for civil liberties.³ Once enacted, whatever its flaws, it will be the most significant data privacy law in the few remaining Asian countries without such a law.

² See G. Greenleaf *Asian Data Privacy Laws: Trade and Human Rights Perspectives* (OUP 2014), p. 448.

³ 'Data protection ACT: Latest draft too leaves room for rights abuse' *The Daily Star* 11 August 2022 <https://www.thedailystar.net/news/bangladesh/news/data-protection-act-scope-there-latest-draft-rights-abuse-3092121>; Shahzeb Mahmood 'Bangladesh's new data protection act: brittle shield or blunt sword?' *The Daily Star* 16 November 2022 <<https://www.thedailystar.net/views/in-focus/news/bangladeshs-new-data-protection-act-brittle-shield-or-blunt-sword-2174371>>.