

Comparison of the Personal Data Protection Bill with the General Data Protection Regulation and the California Consumer Protection Act

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INTRODUCTION

The European Union's General Data Protection Regulation (**GDPR**), replacing the 1995 EU Data Protection Directive came into effect in May 2018. It harmonises the data protection regulations across the European Union. In 2018, California passed the Consumer Protection Act (**CCPA**), to enhance the privacy protection of residents of California. The CCPA came into effect from January 1, 2020, however, the California Attorney General has not begun enforcing the law as yet. The Attorney General will be allowed to take action six months after the rules are finalised, or on July 1, 2020, whichever is earlier¹

In India, the Ministry of Electronics and Information Technology had constituted a Committee of Experts to frame recommendations for a data protection framework in India. The Committee submitted its report and a draft Personal Data Protection Bill in July 2018. On December 11, 2019, the Central Government introduced the Personal Data Protection Bill (**PDP Bill**) in the Lok Sabha.

While the PDP Bill incorporates several concepts of the CCPA and the GDPR, there are also significant areas of divergence. We have prepared the following charts to compare the PDP Bill with the GDPR and the CCPA on the following points: (i) Jurisdiction and scope (ii) Rights of the Data Principal; (iii) Obligations of the Data Fiduciaries; (iv) Exemptions; (v) Data Protection Authority; and (vi) Breach of Personal Data. It is not a comprehensive list of all requirements under the three regulations.

The charts are based on the comparative charts prepared by the Future of Privacy Forum.²

¹ "Karishma Mehrotra, "Explained: California's data privacy law", Indian Express, January 7, 2020, Available at <https://indianexpress.com/article/explained/explained-californias-data-privacy-law-internet-hacking-6203573/>

² Stacy Gray, Pollyanna Sanderson and Katelyn Ringrose, "Comparison of the proposed 2020 Washington Privacy Act (SSB-6281) to: GDPR, CCPA, California Ballot Initiative, and the 2019 WA Proposal", Future of Privacy Forum, Available at <https://fpf.org/wp-content/uploads/2020/02/fpf-comparison-of-wa-ssb-6281-to-gdpr-ccpa-cpra-and-2019-version-v1.0-feb-12-2020-1.pdf>

1. JURISDICTION AND SCOPE

The jurisdiction of all the three regulations extends beyond the territorial boundaries of the respective regulations. The emphasis is on protecting the rights of the individuals residing within the territory of the regulation irrespective of where the data is being processed.

Principle	PDP Bill	GDPR	CCPA
Who can exercise the rights	Natural Persons (Data Principals)	Natural Persons (Data Subjects)	Natural Persons
Who has the obligation	Any person, including the State, a company, a juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data. ³ (Data Fiduciary)	All govt and private legal entities and individuals established in the EU or outside the EU and offering goods or services to EU residents. ⁴	For profit business that does business in California and meets the necessary threshold, namely: (a) Gross annual revenue in excess of 25 million dollars; or (b) 50,000 or more consumers; or (c) 50% of its annual revenue is derived from sale of consumer's personal information ⁵
Extra-territorial application	Y ⁶	Y	Y
Excludes anonymised data	To a certain extent ⁷	Y ⁸	Y
Exemption for manual processing of data	N (except in case of manual processing of personal data by "small entities" as classified by the Data Protection Authority) ⁹	N	N ¹⁰

³ Clause 3(13)

⁴ Article 3

⁵ Cal. Civ. Code § 1798.140 (C)

⁶ Clause 2(c)

⁷ Clause 2(b): The provisions of this Act shall not apply to the processing of anonymised data, other than anonymised data referred to in Section 91.

⁸ Article 2(1)

⁹ Clause 31 (1): The provisions of sections 7,8,9, clause (c) of sub-section (1) of section 17 and sections 19 to 32 shall not apply where the processing of personal data by a small entity is not automated.

¹⁰ Cal. Civ. Code § 1798.140(2)(q)

2. RIGHTS OF THE DATA PRINCIPAL

The rights of the Data Principal (Data Subject under the GDPR and Consumer under the CCPA) are substantially similar. Though, unlike the CCPA, the GDPR and PDP Bill provide for a right to correction of data and a right to restrict processing of data. The GDPR and the PDP Bill do not provide a right to the Data Principal to ‘opt out’ from processing of personal data.

Principle	PDP Bill	GDPR	CCPA
Right to correction	Y ¹¹	Y ¹²	N
Right to erasure	Y ¹³	Y ¹⁴	Y ¹⁵
Right to access	Y ¹⁶	Y ¹⁷	Y ¹⁸
Right to restriction on of processing	Not explicitly provided for Included as part of the Right to be forgotten ¹⁹	Y ²⁰	N
Right to data portability	Y ²¹	Y ²²	Y ²³
Right to be forgotten	N The provision under the heading of Right to be forgotten in the Bill is instead a Right to seek Restriction on Processing of Personal Data.	Y ²⁴	Y
Right to Object	N	Y ²⁵	Y (provides for a right to ‘opt out’) ²⁶ Consumers have

¹¹ Clause 18(1)(a)

¹² Article 16

¹³ Clause 18(1)(d)

¹⁴ Article 17

¹⁵ Cal. Civ. Code § 1798.105

¹⁶ Clause 17(1)

¹⁷ Article 15(1)

¹⁸ Cal.Civ. Code §§ 1798.100(d), 1798.110, 1798.115

¹⁹ Clause 20(1)

²⁰ Article 18(1)

²¹ Clause 19(1)

²² Article 20

²³ Cal.Civ. Code §§ 1798.100

²⁴ Article 17

²⁵ Article 20

²⁶ Cal.Civ. Code §§ 1798.120

			the right to direct companies that sell personal information to third parties, to not sell the information.
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3. OBLIGATIONS OF THE DATA FIDUCIARY

The obligations of the Data Fiduciary (Controller under the GDPR and Business under the CCPA) are higher under the GDPR and the PDP Bill as compared to the obligations specified under the CCPA.

Principle	PDP Bill	GDPR	CCPA
Purpose Limitation	Y ²⁷	Y ²⁸	N
Collection Limitation	Y ²⁹	Y ³⁰	N
Limitation on storage of personal data	Y (data may be retained for a longer period if the data principal provides explicit consent to do so) ³¹	Y (specifies the grounds for which the data may be retained for a longer period) ³²	N
Limitation of secondary use	Y (personal data may be processed for purposes which are incidental to the purpose for which the consent was initially given)	Y (No further processing of personal data for a purpose which is incompatible with the initial purpose)	Y (Business shall not use personal information collected for additional purposes without providing the consumer with necessary notice)
Ensure accuracy of personal data	Y ³³	Y ³⁴	N
Notice/information to be	Y ³⁵	Y ³⁶	Y ³⁷ - It does not specify

²⁷ Article 5(1)(b)

²⁸ Clause 5(b)

²⁹ Clause 6

³⁰ Article 5(1)

³¹ Clause 9(1)

³² Article 5(1)(e)

³³ Clause 8(1)

³⁴ Article 5(1)(d)

³⁵ Clause 7(1)

³⁶ Article 14(3)

³⁷ Cal.Civ. Code §§ 1798.110(a)

provided at the time of collection of personal data			when the notice has to be provided to the individual
Security Safeguards to be implemented	Y ³⁸	Y ³⁹	Does not directly impose security requirements. However, it does establish a right of action for certain data breaches that result from violations of a business's duty to implement and maintain reasonable security practices and procedures ⁴⁰
Appointment of Data Protection Officer	Y (significant data fiduciaries to appoint Data Protection officers) ⁴¹	Y ⁴²	N
Grievance Redressal Mechanism to be implemented	Y	N	N

4. EXEMPTIONS

The CCPA does not provide for any powers to be granted to the State to exempt any business/company from its purview.

	PDP Bill	GDPR	CCPA
Can the State grant an exemption from the law	Y	Y	N
Does the exemption have by way of a legislative measure	N (Central Government can exempt any agency from the purview of the law through a written order/notification)	Y	N
Does the legislative mechanism prescribe the oversight procedure	N (delegated to subordinate legislation)	Y	N

³⁸ Clause 24(1)

³⁹ Article 32(1)

⁴⁰ Cal.Civ. Code §§ 1798.150(a)(1)

⁴¹ Clause 30 (1) read with Clause 26 (1)

⁴² Article 37(1)

5. DATA PROTECTION AUTHORITY

The GDPR, the CCPA and the PDP Bill provide for an authority to supervise the application of the law and to assist organisations in understanding and complying with it. However, each of the designated authority; the Supervisory Authority, the Attorney General and the Data Protection Authority under the GDPR, the CCPA and the PDP Bill respectively, have different investigatory and enforcement powers.

	PDP Bill	GDPR	CCPA
Right to file a complaint before the Authority	Y ⁴³	Y ⁴⁴	N (Consumer has to inform the Attorney General within 30 days of initiating any action against the business organisation) ⁴⁵
Investigative powers	Y ⁴⁶	Y ⁴⁷	Attorney General has the power to assess a violation of the act, but it does not specify which activities are included under this
Right to approach the courts	Y ⁴⁸	Y ⁴⁹	Y (consumer can approach the court only where the consumer's non encrypted or non redacted personal information is subject to an unauthorised access and exfiltration, theft or disclosure) ⁵⁰

⁴³ Clause 53(1)

⁴⁴ Article 77(1)

⁴⁵ Cal.Civ. Code §§ 1798.150(3)

⁴⁶ Clause 53(1)

⁴⁷ Article 58(1)

⁴⁸ Clause 72(1)

⁴⁹ Article 78

⁵⁰ Cal.Civ. Code §§ 1798.150(a)(1)

6. BREACH OF PERSONAL DATA

The GDPR and the PDP Bill clearly specify that the controller/data fiduciary has to first notify the authority about any breach of personal data. The CCPA does not specify the steps to be taken by the business organisation subsequent to any breach of personal data.

	PDP Bill	GDPR	CCPA
Immediate communication by the Data Fiduciary to the Data Principal about a breach of personal data	N	N	Not specified
Obligation to notify the Authority	Y ⁵¹	Y ⁵²	Not specified

⁵¹ Clause 25 (1)

⁵² Article 34(1)