

PROFESSIONAL PROGRAMME

UPDATES FOR INFORMATION TECHNOLOGY AND SYSTEM AUDIT

(Relevant for students appearing in June, 2019 examination)

MODULE 2 PAPER 4

Disclaimer:

This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

Students appearing in June 2019 Examination shall note the following:

Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the Competent Authorities to relate to Law covering Information Technology and Systems Audit & Central Government on or before six months prior to the date of the examination.

These Updates are to facilitate the students to acquaint themselves with the amendments in laws relating to Information Technology and System Audit upto December, 2018, applicable for June, 2019 Examination. The students are advised to read their Study Material (2016 Edition) along with these Updates. In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

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Withdrawal of the BHIM (Bharat Interface for money) Incentive Scheme for Merchants¹

F. No. DPD/12/13/2017-DPD-MeitY.—WHEREAS, the Central Government vide notification of Government of India, Ministry of Electronics and Information Technology No. 12(84)/2017-DPD dated 05th June 2017, has notified a Scheme namely ‘BHIM (Bharat Interface for Money) Cashback Scheme for Merchants’, with the objective to promote usage of BHIM-UPI amongst merchants by incentivizing its adoptions and also to encourage transactions via BHIM-UPI platform.

WHEREAS, the Central Government vide notification of Government of India, Ministry of Electronics and Information Technology No 12/13/2017-DPD dated 14th August 2017, modified and extended the operation of the scheme till 31st March 2018.

WHEREAS, the Central Government vide notification of Government of India, Ministry of Electronics and Information Technology No. 12/13/2017-DPD-MeitY dated 26th April 2018, has modified the scheme as ‘BHIM Incentive Scheme for Merchants’.

AND WHEREAS, the Central Government has reviewed the scheme and **the scheme is hereby withdrawn with effect from 01st July 2018.**

Subject: Modification of BHIM Cashback scheme for Individuals

WHEREAS, the Central Government vide notification of Government of India, Ministry of Electronics and Information Technology No. 12(84)/2017-DPD dated 05th June 2017, has notified a Scheme namely ‘BHIM (Bharat Interface for Money) Referral Scheme for Individuals’, with the objective to incentivize the existing users of BHIM and to bring new users on BHIM platform so as to encourage new users to do transactions using BHIM.

WHEREAS, the Central Government vide notification of Government of India, Ministry of Electronics and Information Technology No 12/13/2017-DPD dated 14th August 2017, modified and extended the operation of the scheme till 31st March 2018.

WHEREAS, the Central Government vide notification of Government of India, Ministry of Electronics and Information Technology No. 12/13/2017-DPD-MeitY dated 26th April 2018, has modified the scheme as ‘BHIM Cashback scheme for Individuals’.

AND WHEREAS, the Central Government has reviewed the scheme.

Now, the Central Government hereby makes the following amendments in the notification of Government of India, Ministry of Electronics and Information Technology No. 12/13/2017-DPD-MeitY dated 26th April 2018 notified under the subject namely “Continuation and modification of BHIM (Bharat Interface for Money) referral bonus scheme for individuals (Now named as BHIM Cashback scheme for Individuals)”:-

¹ Available at: http://meity.gov.in/writereaddata/files/Bhim_Cashback_Scheme-Revised.pdf

For provisions in paragraph 1, 2 & 3, the following provisions in the said paragraphs are substituted namely:-

Paragraph 1.4: In the promotion of digital payments, incentive schemes are widely used to promote adoption of the new technologies, platforms and apps and it has proven effective. The BHIM Cashback scheme for Individuals has been designed to encourage the onboarding of new users on the BHIM App and increase the usage of BHIM based transactions. The objectives of the scheme are:

- Increase the number of users downloading, installing, linking BHIM App with their bank accounts and undertaking financial transactions using BHIM App.
- Increase in the number of transactions using BHIM App.

Paragraph: 2.1: The scheme offers Incentive for Onboarding the BHIM App and undertaking minimum ten unique financial transactions. The scope of the scheme is new BHIM app users only. The scheme will come into effect from 4th July 2018 and will be valid till 31st March 2019. The scheme can be reviewed anytime based on the Government directions.

2.3 The incentive will be paid to the new users of the BHIM app ONLY who successfully download the BHIM app, links the BHIM app with their bank account/s and undertake ten successful financial transaction through BHIM app.

2.4 The incentive will be paid as per the following:

S. No	Incentive for onboarding the BHIM App	Total amount (in Rs.) per BHIM app user	Conditions
1.	New BHIM app user on downloading, installing and successfully completing ten unique financial transactions during the scheme duration i.e till 31 st March 2019.	Rs 150	Minimum transaction value should be Rs 50. The incentive will be paid only once per new BHIM app user who completes the ten unique transactions. Only unique transactions will be eligible for the incentive.

3. Paragraph 3.1: Qualification to earn incentives:

(a) For “incentive for onboarding on BHIM app”, the user has to download, install and link BHIM app with the bank account/s and successfully complete ten unique financial transactions of value equal and more than Rs. 50 during the scheme duration. The incentive will be paid only once during the scheme period and to the new BHIM App users only.

(b) To be deleted

Paragraph 3.3:

(a) Only valid approved transactions from BHIM app or *99# will be considered for the scheme.

(b) The “unique transaction” is the first financial transaction originated by the BHIM App user and made to BHIM/BHIM-UPI users.

(c) Incentive on the transactions will be paid to the user who is initiating the “valid financial transaction”.

(d) “Valid financial transaction”: Money transfer from one bank account to another bank account of amount greater than or equal to Rs. 50 and less than or equal to Rs. 1,00,000.

The Personal Data Protection Bill, 2018²

With the advancement in technology, personal data created and stored in hard disk cloud, database, memory disk, internet, computer, etc., continues to grow at limitless rates, thereby leading the data to enter the Public Domain. This data is then subjected to maxim threats, which are classified into two categories - external threats to information security such as threats from hackers, network security threats, denial-of- service attacks, software threats, etc. and internal threats which are often associated with misuse or misrepresentation of information, data breaches and leaks.

The term Data Protection means legal control over access to and use of data stored. In other words, it refers to a series of continuous and repetitive processes, sound policies and privacy laws to reduce intrusion in one's privacy.³

On August 24, 2017, a nine-judge bench of the Supreme Court, in the landmark case of Justice K.S. Puttaswamy and Anr. v. Union of India and Ors⁴, has ruled "Privacy" as a Fundamental Right essential to life and liberty, and thereby, it has been put under the ambit of Article 21 of the Indian Constitution. The bench comprised Chief Justice Khehar and Justices J. Chelameswar, S.A. Bobde, R.K. Agrawal, Rohinton Nariman, A.M. Sapre, D.Y. Chandrachud, Sanjay Kishan Kaul and S. Abdul Nazeer.

The Judgement was delivered by Justice D.Y. Chandrachud, wherein he stated "*Ours is an age of information. Information is knowledge. The old adage that 'knowledge is power' has stark implications for the position of the individual where data is ubiquitous, an all- encompassing presence. The internet has become all pervasive as individuals spend more and more time online each day of their lives... the internet is used to carry on business and to buy goods and services.*"

It was further stated, "*Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection. The creation of such a regime requires a careful and sensitive balance between individual interests and legitimate concerns of the state.*"

² Available at: http://meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill,2018.pdf

³ Wadhwa Anjali (2018), The Personal Data Protection Bill, 2018, The Mondaq

⁴ WRIT PETITION (CIVIL) NO 494 OF 2012

In order to have an effective and efficient data protection mechanism in India, Justice BN Srikrishna Committee was formed, which has submitted the draft bill on personal data protection to the Ministry of Electronic and Information Technology on July 27, 2018.

Key Features of the Draft Personal Data Protection Bill, 2018⁵

Key Features of the Draft Personal Data Protection Bill, 2018 are as below:

Rights of the individual: The Bill sets out certain rights of the individual. These include: (i) right to obtain confirmation from the fiduciary on whether its personal data has been processed, (ii) right to seek correction of inaccurate, incomplete, or out-of-date personal data, and (iii) right to have personal data transferred to any other data fiduciary in certain circumstances.

Obligations of the data fiduciary: The Bill sets out obligations of the entity who has access to the personal data (data fiduciary). These include: (i) implementation of policies with regard to processing of data, (ii) maintaining transparency with regard to its practices on processing data, (iii) implementing security safeguards (such, as encryption of data), and (iv) instituting grievance redressal mechanisms to address complaints of individuals.

Data Protection Authority: The Bill provides for the establishment of a Data Protection Authority. The Authority is empowered to: (i) take steps to protect interests of individuals, (ii) prevent misuse of personal data, and (iii) ensure compliance with the Bill. It will consist of a chairperson and six members, with knowledge of at least 10 years in the field of data protection and information technology. Orders of the Authority can be appealed to an Appellate Tribunal established by the central government and appeals from the Tribunal will go to the Supreme Court.

Grounds for processing Personal Data: The Bill allows processing of data by fiduciaries if consent is provided. However, in certain circumstances, processing of data may be permitted without consent of the individual. These grounds include: (ii) if necessary for any function of Parliament or state legislature, or if required by the state for providing benefits to the individual, (iii) if required under law or for the compliance of any court judgement, (iv) to respond to a medical emergency, threat to public health or breakdown of public order, or, (v) for reasonable purposes specified by the Authority, related to activities such as fraud detection, debt recovery, and whistle blowing.

⁵ Draft Personal Data Protection Bill, 2018: A Report By PRS India, 2018.

Grounds for processing Sensitive Personal Data: Processing of sensitive personal data is allowed on certain grounds, including: (i) based on explicit consent of the individual, (ii) if necessary for any function of Parliament or state legislature, or, if required by the state for providing benefits to the individual, or (iii) if required under law or for the compliance of any court judgement.

Sensitive personal data includes passwords, financial data, biometric data, genetic data, caste, religious or political beliefs, or any other category of data specified by the Authority. Additionally, fiduciaries are required to institute appropriate mechanisms for age verification and parental consent when processing sensitive personal data of children.

Transfer of data outside India: Personal data (except sensitive personal data) may be transferred outside India under certain conditions. These include: (i) where the central government has prescribed that transfers to a particular country are permissible, or (ii) where the Authority approves the transfer in a situation of necessity.

Exemptions: The Bill provides exemptions from compliance with its provisions, for certain reasons including: (i) state security, (ii) prevention, investigation, or prosecution of any offence, or (iii) personal, domestic, or journalistic purposes.

Offences and Penalties: Under the Bill, the Authority may levy penalties for various offences by the fiduciary including (i) failure to perform its duties, (ii) data processing in violation of the Bill, and (iii) failure to comply with directions issued by the Authority. For example, under the Bill, the fiduciary is required to notify the Authority of any personal data breach which is likely to cause harm to the individual. Failure to promptly notify the Authority can attract a penalty of the higher of Rs 5 crore or 2% of the worldwide turnover of the fiduciary.

Amendments to other laws: The Bill makes consequential amendments to the Information Technology Act, 2000. It also amends the Right to Information Act, 2005, and to permit non-disclosure of personal information where harm to the individual outweighs public good.